IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-11-2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.5334 of 2007

M/s.NAV BHARAT ENTERPRISES,
Rep. by its Sole Proprietor
Ranjith Madhavan,
H.O.9D, Ajit Nagar,
Co-operative Housing Society,
Next to Jankalyan Bank,
J.B.ngar, Anderi(E),
Bombay-400 059. .. Petitioner.

Versus

Airports Authority of India,
International Airports Division,
Rep. by its Deputy General Manager (Commercial)
Meenambakkam, Chennai-600 027. .. Respondent.

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus calling for the records of the respondent, relating to the Order in No.AAM/C.2908/Vol.IV/2006/359, dated 19.01.2007 and quash the same and forbear the respondent herein from holding fresh auction or Licence Fee for Management of Car Park Services at Kamaraj Domestic Terminal and Anna International Terminal at Chennai Airport.

For petitioner : Mr.K.Doraisamy (Senior Counsel)
for Mrs.Muthumani Doraisamy
For respondent : Fr.A.Xavier Arulraj

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O R D E R

Heard Mr.K.Doraisamy, the learned Senior counsel appearing for the petitioner and Fr.A.Xavier Arulraj, the learned counsel appearing for the respondent.

2. It has been submitted by the petitioner that tenders were called for, for the grant of licence for management of Car Parking Services at Kamaraj Domestic Terminal and Anna International Terminal at Chennai Air Port. The petitioner had participated in the tender. The tender submitted by the petitioner had been accepted by the competent authority by an order in No.AAM/C.2908/2005/3823, dated 17.10.2005. The Airports Authority of India granted the licence to the petitioner for a period of five years,

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with effect from 17.10.2005. Clause 16 of the Special Terms and Conditions of the order provided for an increase of the licence fee. It was stated therein that in case of modification/re-designing of the Car Park areas at Kamaraj Domestic Terminal and Anna International Terminal during the currency of the contract resulting in increase in the Car Park areas and the resultant increase in the revenue to the Licensee, the licence fee shall be negotiated and the negotiated amount implemented for which the licensee shall have no objection. Various other conditions had also been stipulated, as part of the Terms and Conditions of the contract.

3. It has been further stated that the respondent had written a letter in No.AAM/C.ST/2006/1038, dated 28.02.2006, to the effect that the petitioner should pay the service tax, including Education Cess at 10.2 % on the lumpsum amount of Licence Fee contrary to its order, dated 07.12.2005. After several communications were exchanged between the petitioner and the respondent by letters, dated 11.05.2006 and 18.05.2006 and in accordance with the negotiations held on 19.05.2006, the respondent had demanded, in addition to the yearly increase of 10% on the monthly licence fee an additional increase of 7% to adjust the Service Tax at 12.24%. By a letter, dated 18.07.2006, the petitioner had informed the respondent that it would be possible to increase the licence fee only by 3% i.e. a sum of Rs.2,10,625/- per month in addition to the service tax at 12.24%, apart from the 10% annual increase. It was also pointed out that there is no modification/re-designing of the car park areas and therefore, there is no resultant increase in revenue. As per clause 16 of the Special Terms and conditions, there was no justification for the respondent to enhance the licence fees.

4. It has been further stated that instead of considering the offer made by the petitioner, the respondent had issued an order in No.AAM/C.2908/Vol.IV/2006/359, dated 19.01.2007, not only terminating the contract, but also debarring the petitioner from participating in AirPorts Authority of India tenders for a period of two years. Hence, the petitioner had filed the present writ petition before this Court, under Article 226 of the Constitution of India, raising various grounds therein, challenging the impugned proceedings of the respondent, dated 19.01.2007.

5. Learned counsel appearing for the respondent had contested the claims made by the petitioner. However, he had pointed out that according to clause 30 of the General Terms and Conditions applicable to the licence agreement entered into between the petitioner and the respondent, the petitioner ought to have referred the dispute, if any, to be resolved by way of arbitral proceedings, rather than agitating the matter before this Court by way of a writ petition invoking Article 226 of the Constitution of India. Clause 30 of the General Terms and Conditions of the licence agreement reads as follows:

> "30. All disputes and differences arising out of or in any way touching or concerning this Agreement (except those the decision whereof is otherwise herein before expressly provided for or to which the Public Premises [Eviction of Unauthorised Occupants] Act and the rules framed thereunder which are now inforce or which may hereafter come into force are applicable), shall be referred to the sole arbitration of a person to be

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appointed by the Chairman/Member of the Authority. The award of the arbitrator so appointed shall be final and binding on the parties. The Arbitration and Conciliation Act 1996 shall be applicable."

6. On such submissions being made, this court is of the considered view that the dispute between the petitioner and the respondent ought to be dealt with only in accordance with Clause 30 of the General Terms and Conditions of the licence agreement, dated 30.05.2007, entered into between the petitioner and the respondent. The learned counsel appearing on behalf of the petitioner has not disputed this factual position.

7. However, from the submissions made by the learned counsels appearing on behalf of the parties concerned, it is understood that the status quo prevailing as on today would be maintained till the arbitral proceedings are completed. It is also made clear that the petitioner is to co-operate in the conduct and progress of the arbitration proceedings to be initiated by the respondent. The learned counsel appearing for the respondent has also submitted that the arbitral proceedings would be completed, within six months from the date of receipt of a copy of this order.

With the above observations, this writ petition is disposed of. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

csh

To

The Deputy General Manager (Commercial)
Airports Authority of India,
International Airports Division,
Meenambakkam, Chennai-600 027.

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1 cc To M/s.Muthumani Doraisamy, Advocate, SR.70046.
1 cc To Mr.Fr.A.Xavier Arulraj, Advocate, SR.70042.

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RVL 29.11.2007

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